

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSEPH CORTEZ DAVENPORT,

Petitioner,

Case Number: 2:07-CV-12583

v.

HONORABLE DENISE PAGE HOOD

BARRY DAVIS,

Respondent.

OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Joseph Cortez Davenport (“Petitioner”) is a state inmate currently incarcerated at the Newberry Correctional Facility in Newberry, Michigan, pursuant to convictions for three counts of first-degree criminal sexual conduct. He has filed a *pro se* petition for a writ of habeas corpus challenging these convictions. The court finds that the petition is duplicative of another petition pending in this District and, therefore, dismisses the petition.

On May 4, 2007, Petitioner filed a habeas corpus petition in this Court, challenging his 2004 convictions on three counts of first-degree criminal sexual conduct. That petition was assigned to the Honorable Avern Cohn. *See Davenport v. Davis*, No. 2:07-cv-12047 (E.D. Mich.) (Cohn, J.) The challenged convictions were rendered in Oakland County Circuit Court. In that petition, Petitioner presents the following claims: (i) the prosecutor improperly introduced unsworn out-of-court statements to bolster credibility of complaining witness; (ii) Petitioner denied right to be informed of charges against him and right of confrontation; (iii) Petitioner was denied right to a fair and impartial jury; and (iv) Petitioner was denied right to a fair trial by prosecutorial misconduct and cumulative effect of errors. That matter remains pending.

On June 18, 2007, Petitioner filed the pending petition for a writ of habeas corpus. Petitioner challenges the same convictions challenged in the earlier-filed petition and presents the same claims presented in that petition.

“[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions.” *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir.1993) (internal quotation marks and citations omitted). This petition challenges the same convictions challenged in the petition currently pending before the Honorable Avern Cohn and raises claims that are identical to the claims raised in the earlier-filed petition. Therefore, the instant petition is duplicative and shall be dismissed. *See Davis v. U.S. Parole Commission*, No. 88-5905, 1989 WL 25837 (6th Cir. 1989) (holding that a district court may dismiss a habeas petition when it is duplicative of a pending habeas petition); *Marks v. Wolfenbarger*, No. 2:06-cv-14325, 2006 WL 2850340, *1 (E.D. Mich. Oct. 3, 2006) (Edmunds, J.) (same); *Fuson v. Harry*, No. 06-13211-BC, 2006 WL 2421639, *1 (E.D. Mich. Aug. 22, 2005) (Lawson, J.) (same). To the extent that Petitioner wishes to raise additional claims not already before the court in the earlier-filed petition, Petitioner may do so by seeking leave to amend that petition in accordance with the requirements of Federal Rule of Civil Procedure 15.

Accordingly, IT IS ORDERED that the petition for a writ of habeas corpus [dkt. #1] is DISMISSED WITHOUT PREJUDICE.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: April 30, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record and Joseph Davenport, Reg. No. 511801, Newberry Correctional Facility, 3001 Newberry Ave., Newberry, MI 49868 on April 30, 2008, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager